



NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 702, 708a, 708b, 750, and 790

[NCUA-2022-0008]

RIN 3133-AF41

Asset Threshold for Determining the Appropriate Supervisory Office

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The NCUA Board (Board) is proposing to amend its regulations to revise the \$10 billion asset threshold used for assigning supervision of consumer federally insured credit unions (FICUs) to the Office of National Examinations and Supervision (ONES). The proposed rule would only apply to FICUs whose assets are \$10 billion or more (covered credit unions). The proposed rule would provide that covered credit unions with less than \$15 billion in total assets (tier I covered credit unions) not currently supervised by ONES will be supervised by the appropriate NCUA Regional Office. Tier I covered credit unions currently supervised by ONES and covered credit unions with \$15 billion and more in total assets (tier II and tier III covered credit unions) would continue to be supervised by ONES. The proposed rule would not alter any regulatory requirements for covered credit unions.

DATES: Comments must be received by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit written comments, identified by RIN 3133-AF41, by any of the following methods (please send comments by one method only):

- Federal eRulemaking Portal: <https://www.regulations.gov>. The docket number for this direct final rule is NCUA-2022-0008. Follow the instructions for submitting comments.

- Fax: (703) 518-6319. Include “[Your Name]—Comments on Asset Threshold for Determining the Appropriate Supervisory Office” in the transmittal.
- Mail: Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.
- Hand Delivery/Courier: Same as mail address.

Public inspection: You may view all public comments on the Federal eRulemaking Portal at <https://www.regulations.gov>, as submitted, except for those we cannot post for technical reasons. The NCUA will not edit or remove any identifying or contact information from the public comments submitted. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518-6540 or emailing OGCMail@ncua.gov.

FOR FURTHER INFORMATION CONTACT: Yvonne Applonie, Director of Supervision, Office of National Examinations and Supervision; or Rachel Ackmann, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314-3428. Yvonne Applonie can also be reached at (703) 518-6595, and Rachel Ackmann can be reached at (703) 548-2601.

SUPPLEMENTARY INFORMATION:

I. Background

Part 702 Capital Planning and Stress Testing Requirements

Part 702, subpart C, of the NCUA’s regulations (part 702) implements the NCUA’s capital planning and stress testing requirements for consumer FICUs.¹ As discussed above, a consumer FICU is defined as a covered credit union, and subject to capital planning and stress

¹ 12 CFR 702.301. The term consumer FICU is being used instead of the term natural person FICU. This terminology is being used for clarity, however, the term natural person FICU will continued to be used for the accompanying regulatory text changes for consistency with other sections of the NCUA’s regulations.

testing requirements, if it has \$10 billion or more in total assets.² Covered credit unions are then further divided into three tiers, and varying levels of regulatory requirements are imposed based on those asset tiers. For example, tier I credit unions are not subject to stress testing requirements, however tier II and tier III credit unions are subject to stress testing requirements.

Under part 702:

- A tier I credit union is a covered credit union that has less than \$15 billion in total assets;
- A tier II credit union is a covered credit union that has \$15 billion or more in total assets, but less than \$20 billion in total assets, or is otherwise designated as a tier II credit union by the NCUA; and
- A tier III credit union is a covered credit union that has \$20 billion or more in total assets, or is otherwise designated as a tier III credit union by the NCUA.

Agency Structure

In 2012, the NCUA established a new office, the Office of National Examinations and Supervision (ONES), and reorganized its central and field office structure. As part of its internal restructuring, the NCUA transferred the responsibility for supervising covered credit unions to ONES from the Regional Offices.³ Initially, covered credit unions were transferred to ONES on January 1, 2014. Annually thereafter FICUs newly reporting assets of \$10 billion or more on March 31 of a given calendar year are reassigned to ONES on the first day of the following calendar year.

² 12 CFR 702.302.

³ In general, Regional Office means the office of NCUA located in the designated geographical areas in which the office of the FICU is located.

COVID-19 Pandemic

Many FICUs have experienced significant balance sheet growth as a result of the COVID-19 Pandemic and the corresponding policy response.⁴ For example, FICUs with just below \$10 billion in total assets incurred balance sheet growth of about 14 percent on average during the COVID-19 Pandemic, and in one case more than 34 percent. In contrast, FICUs with assets just below the \$10 billion threshold had an average asset growth of only 9 percent in 2019.

In March 2021, the Board provided regulatory relief to FICUs meeting certain asset thresholds through an interim final rule (Asset Threshold IFR).⁵ The Asset Threshold IFR permitted FICUs to continue to use financial data as of March 31, 2020, to determine the applicability of certain regulations for calendar years 2021 and 2022, instead of assets reported as of March 31, 2021. The Asset Threshold IFR also made a conforming amendment to the measurement date for determining ONES supervision. Under the Asset Threshold IFR, the NCUA used financial data as of March 31, 2020, instead of March 31, 2021, to determine the appropriate supervisory office of FICUs for calendar year 2022. As a result, no FICU was transitioned to ONES supervision for calendar year 2022, even if the FICU had \$10 billion or more in total assets as of March 31, 2021.

The next effective measurement period to determine whether a FICU is subject to capital planning and stress testing requirements and ONES supervision is March 31, 2022. Unless the threshold is changed, the Board anticipates at least nine new FICUs will meet or exceed the \$10 billion threshold as of March 31, 2022, and would become subject to ONES supervision beginning January 1, 2023.

⁴ See generally, 86 FR 15397 (Mar. 23, 2021).

⁵ *Id.*

II. The Proposed Rule

The Board has reconsidered its policy of assigning all covered credit unions to ONES supervision. Under the proposed rule, tier II and tier III covered credit unions would remain subject to ONES supervision. The Board, however, would not assign tier I covered credit unions to ONES supervision.⁶ Tier I covered credit unions would generally remain subject to Regional Office supervision until they become tier II covered credit unions.⁷

Tier I covered credit unions that are currently supervised by ONES, however, would be grandfathered under the proposed rule and remain subject to ONES supervision.⁸ The proposed rule would grandfather tier I covered credit unions currently subject to ONES supervision to provide continuity for institutions that are already accustomed to ONES supervision. The Board believes that most grandfathered tier I covered credit unions would likely become tier II credit unions, and subject to ONES supervision, due to organic growth within a short timeframe. Given these covered credit unions would once again be subject to ONES supervision as tier II credit unions within a short timeframe, the Board believes transitioning the grandfathered credit unions to Regional Office supervision is unnecessary. The Board, however, invites comments on whether grandfathered credit unions should be subject to Regional Office supervision until they become tier II covered credit unions.

The Board has reconsidered its position that all covered credit unions should transition to ONES for two reasons. First, the agency can more effectively manage its resources by

⁶ As discussed in the *Reservation of Authority* section, the Board has the option of using its existing reservation of authority in part 702 to transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III covered credit union.

⁷ The proposed rule would also revise the authority citation in part 702 to cite 12 U.S.C. 1784(a) and 1786(e), which were previously added but inadvertently removed from the Code of Federal Regulations.

⁸ Accordingly, if a FICU had \$10 billion or more in total assets on or before March 31, 2020, then it is currently subject to ONES supervision. If a FICU has crossed the \$10 billion threshold since March 31, 2020, then it is not currently subject to ONES supervision due to the Asset Threshold IFR and, under this proposed rule, would not be subject to ONES supervision until it is a tier II covered credit union.

continuing to supervise most tier I covered credit unions through the Regional Offices. Without delaying the transition of tier I covered credit unions to ONES supervision, the number of covered credit unions supervised by ONES would approximately double in calendar year 2023, which would require a substantial reallocation of agency resources.

Second, the Board has reconsidered the level of risk to the National Credit Union Share Insurance Fund (NCUSIF) posed by tier I covered credit unions. Applying a historical loss factor of 30 percent on a FICU failure to the NCUSIF's equity suggests that a \$15 billion credit union presents the same relative risk at the end of 2020 as an approximately \$10 billion FICU did at the beginning of 2013 when covered credit unions were first transitioned to ONES supervision.

The Board also does not believe that altering tier I covered credit unions' transition to ONES supervision results in undue risk to the NCUSIF. Regulatory requirements for covered credit unions are not affected by the proposed rule. For example, capital planning and stress testing requirements are initially triggered at \$10 billion in assets.⁹ These requirements will remain in effect for all covered credit unions regardless of a covered credit union's supervisory office.¹⁰

Additionally, the NCUA has implemented various supervisory tools which enhance offsite monitoring of covered credit union risk. Under the proposed rule, these tools would remain in use for the supervision of covered tier I credit unions regardless of their supervisory office. Specifically, all covered credit unions would continue to be required to submit data to the NCUA under the capital planning and stress test rule.¹¹ Data collection is part of the NCUA's strategic initiative to enhance supervision and is used to inform qualitative and quantitative

⁹ 12 CFR 702.302.

¹⁰ Tier I covered credit unions' capital plans would be subject to Regional Office review (provided the tier I covered credit union is not grandfathered under ONES supervision).

¹¹ 12 CFR 702.306(d).

assessments and ratings of covered credit unions. Further, this data provides insight for offsite supervision and enable timely risk identification and mitigation. The NCUA shares the results of this information collection and collaborates with applicable state supervisory authorities on joint supervisory efforts.

Finally, as discussed above, ONES was formed, in part, to provide enhanced supervision of FICUs systemically important to the NCUSIF. And while regulatory requirements remain the same for tier I covered credit unions under the proposed rule, certain aspects of ONES enhanced supervision may vary for covered credit unions supervised by Regional Offices. The Board believes this difference, along with other more technical procedures unique to ONES supervision, is not necessary to adequately supervise tier I covered credit unions given the mitigating factors discussed above.

Therefore, the Board does not believe that altering tier I covered credit unions' transition to ONES supervision results in undue risk to the NCUSIF.

Reservation of Authority

The proposed change to the threshold for FICUs being supervised by ONES would generally apply to new tier I covered credit unions. However, there may be rare instances that warrant a FICU with assets between \$10 billion and \$15 billion to be assigned to ONES. To address such situations, the Board may use existing reservations of authority in part 702 to transfer a tier I covered credit union to ONES supervision before it becomes a tier II or tier III covered credit union.¹² When making any such determination, the Board would consider all relevant factors affecting the covered credit union's safety and soundness, such as its activities, business model, risk-management practices, and the types of assets held. Any exercise of authority under this section by the NCUA would be in writing and would consider the financial

¹² 12 CFR 702.301.

condition, size, complexity, risk profile, scope of operations, and level of net worth of the covered credit union, in addition to any other relevant factors. The Board solicits comments on its proposed use of the reservation of authority to transfer a tier I covered credit to ONES supervision.

III. Legal Authority

The Board is issuing this proposed rule pursuant to its authority under the Federal Credit Union Act (FCU Act).¹³ Under the FCU Act, the NCUA is the chartering and supervisory authority for federal credit unions (FCUs) and the federal supervisory authority for FICUs. The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe regulations for the administration of the FCU Act.¹⁴ Section 209 of the FCU Act is a plenary grant of regulatory authority to the NCUA to issue regulations necessary or appropriate to carry out its role as share insurer for all FICUs.¹⁵ Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

IV. Request for Comments

The Board seeks comment on all aspects of this proposed rule. In particular, the Board seeks comment on the advantages and disadvantages of adjusting the threshold for determining which credit unions are supervised by ONES. Should the Board consider other amendments to its supervisory process for covered credit unions? Is the definition of ONES credit union sufficiently clear? Should the definition state explicitly that it does not include tier I covered credit unions that are not grandfathered?

¹³ 12 U.S.C. 1751 *et seq.*

¹⁴ 12 U.S.C. 1766(a).

¹⁵ 12 U.S.C. 1789.

V. Regulatory Procedures

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden (44 U.S.C. 3507(d)). For purposes of the PRA, a paperwork burden may take the form of a reporting, recordkeeping, or a third-party disclosure requirement, referred to as an information collection. The proposed rule will not affect any existing or impose any new information collection requirements.

The information collection requirement under Office of Management and Budget (OMB) No. 3133-0199, Capital Planning and Stress Testing, that tier I covered credit unions retain a record of their annual capital plan will remain in effect regardless of a covered credit union's supervisory office.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule or a final rule pursuant to the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the *Federal Register*. Specifically, the RFA normally requires agencies to describe the impact of a rulemaking on small entities by providing a regulatory impact analysis. For purposes of the RFA, the Board considers credit unions with assets less than \$100 million to be small entities.¹⁶ A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the *Federal Register* together with the rule. The proposed rule affects the supervisory office assigned to

¹⁶ NCUA Interpretive Ruling and Policy Statement 15–1, 80 FR 57512 (Sept. 24, 2015).

oversee large FICUs with \$10 billion or more in total assets. Therefore, the Board certifies that it would not have a significant economic impact on a substantial number of small credit unions.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles.

This proposed rule would not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has therefore determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999.¹⁷

List of Subjects

12 CFR Part 700

Credit unions.

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708a

¹⁷ Pub. L. 105–277, 112 Stat. 2681 (1998).

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 708b

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

12 CFR Part 790

Organization and functions (Government agencies).

By the NCUA Board on February 17, 2022.

Melane Conyers-Ausbrooks,
Secretary of the Board.

For the reasons discussed in the preamble, the Board proposes to amend 12 CFR parts 700, 701, 702, 708a, 708b, 750, and 790 as follows:

PART 700—DEFINITIONS

1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

2. In § 700.2, revise the definitions of “Regional Director” and “Regional Office” to read as follows:

§ 700.2 Definitions.

* * * * *

Regional Director means the representative of NCUA in the designated geographical area in which the office of the federally insured credit union is located or, for ONES credit unions

under part 702 of this chapter, the Director of the Office of National Examinations and Supervision.

Regional Office means the office of NCUA located in the designated geographical areas in which the office of the federally insured credit union is located or, for ONES credit unions under part 702 of this chapter, the Office of National Examinations and Supervision.

* * * * *

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1785, 1786, 1787, 1788, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

4. In § 701.14, revise paragraph (c)(3)(i) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(c) * * *

(3) * * *

(i) *Where to file.* Notices will be filed with the appropriate Regional Director or, in the case of a corporate credit union or a ONES credit union under part 702 of this chapter, with the Director of the Office of National Examinations and Supervision. All references to Regional Director will, for corporate credit unions and ONES credit unions under part 702 of this chapter, mean the Director of Office of National Examinations and Supervision. State-chartered federally insured credit unions will also file a copy of the notice with their state supervisor.

* * * * *

PART 702—CAPITAL ADEQUACY

5. The authority citation for part 702 is revised to read as follows:

Authority: 12 U.S.C. 1766(a), 1784(a), 1786(e), 1790d.

6. In § 702.302, add a definition of “ONES credit union,” in alphabetical order, to read as follows:

§ 702.302 Definitions.

ONES credit union means a credit union subject to supervision by the Office of National Examinations and Supervision and includes tier I covered credit unions that had \$10 billion or more in total assets as of March 31, 2020, and tier II and tier III covered credit unions.

PART 708a—BANK CONVERSIONS AND MERGERS

7. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

8. In § 708a.101, revise the second sentence of the definition of “Regional Director” to read as follows:

§ 708a.101 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA’s Office of National Examinations and Supervision.

* * * * *

9. In § 708a.301, revise the second sentence of the definition of “Regional Director” to read as follows:

§ 708a.301 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA's Office of National Examinations and Supervision.

* * * * *

PART 708b—MERGERS OF INSURED CREDIT UNIONS INTO OTHER CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

10. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

11. In § 708b.2, revise the second sentence of the definition of "Regional Director" to read as follows:

§ 708b.2 Definitions.

* * * * *

Regional Director * * * For corporate credit unions and natural person credit unions defined as ONES credit unions under part 702 of this chapter, Regional Director means the Director of NCUA's Office of National Examinations and Supervision.

* * * * *

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

10. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

11. In § 750.6, revise the third sentence of paragraph (a) to read as follows:

§ 750.6 Filing instructions; appeal.

(a) * * * In the case of a Federal or state-chartered corporate credit union or ONES credit union under part 702 of this chapter, such written requests must be submitted to the Director of the Office of National Examinations and Supervision. * * *

* * * * *

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

12. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

13. In § 790.2, revise the first sentence of paragraph (c)(2) to read as follows:

§ 790.2 Central and field office organization.

* * * * *

(c) * * *

(2) * * * Similar to a Regional Director, the Director of the Office of National Examinations and Supervision manages NCUA's supervisory program over credit unions; however, it oversees the activities for corporate credit unions and of natural person credit unions defined as ONES credit unions under part 702 of this chapter, in accordance with established policies. * * *

[FR Doc. 2022-03846 Filed: 3/2/2022 8:45 am; Publication Date: 3/3/2022]